

REMARKS

5           Claims 1-3, 5, and 9-20 remain pending in this application. Claims 1, 5, 9, 10  
and 15 each have been currently amended. Claims 4, 6, 7, and 8 have been canceled.  
Please note that Claims 1 and 15 have been amended to more clearly distinguish over  
the cited prior art, while Claims 5, 9 and 10 have been amended to ensure proper  
antecedent basis relative to the amendment of Claim 1.

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Referring to the Office Action, claim 1 is objected to for the informality where the  
claim recites "that the apertures are configured to provide a scraping action against  
entrapped hairs." Applicants have amended the claim to recite that the scraping action  
is performed by the edges of the comb teeth.

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Applicants believe that an overview of the present invention relative to the prior  
art is important for the Examiner to understand. More specifically, Applicants  
recognized that the treatment/removal of lice and nits requires utilizing a device capable  
of handling the minute size of the lice and nits and the tough glue that allows the lice  
20 and nits to adhere to the hair shaft and follicles. The device of the present invention is  
capable of combing virtually the entire length of individual hair strands from the base of  
the scalp with exceedingly small tolerances, not found in the prior art. All existing

combs and devices reveal distinct disadvantages including an open side or area, and fixed tolerances. The present invention as claimed, utilizes a scissor-like handle feature and other features, that totally encompasses and entraps the hair follicle and lice/nit infected hair shaft within an aperture or captive regions formed by overlapping teeth.

- 5 This feature and other features of the present invention, provides improved ease of use for stripping and removing lice and nits from the infected hair shafts.

The features on the opposing offset parallel blades allow the opposing blade members to create a vise-like grip with minimal tolerances, which is materially distinct  
10 from the prior arts' shearing/cutting action of the scissors and similar devices. Furthermore, the feature of providing saw-tooth shaped teeth allows the user to get closer to the scalp of the infected person, and to the base of the hair follicle to ensure total lice/nit removal. Scissors cut hair via shearing closing mechanisms with their angled blades providing a single point of contact with hairs at any given time. The  
15 present device, as claimed, includes opposing blade members in offset parallel planes to create apertures around the individual hair shaft/follicles that entrap the smallest hair follicle size to allow the removal of the infected lice and nits.

Referring to the Office Action, claims 1, 2, 4-12, 14-16, and 20 stand rejected  
20 under 35 U.S.C. 102(b) as anticipated by Mani (U.S. 1,858,828). The Office Action states that Mani discloses a comb guide that comprises all the features claimed by Applicants. The rejection is hereby traversed and reconsideration is respectfully requested.

Mani discloses a comb guide intended to facilitate the proper cutting of hair. The comb guide of Mani is designed to grasp a portion of the hair at a desired length for straight cutting by scissors or clipper. Mani discloses using comb teeth that “gradually and uniformly increase in thickness and uniformly spaced from the outer end 10 toward the handles.” (Col. 2, lines 53-55). The comb teeth operate to arrange the hairs in a manner to present the hair above the comb teeth to be cut. Mani further discloses that the “extreme inner teeth 15 are considerably thicker and spaced wider apart than the fine teeth 15a adjacent the outer end of the comb.” (Col. 2, lines 56-59). Also shown in 10 Figures 2 and 4 in Mani, the comb guide taught by Mani includes comb teeth 14 extending from the comb bodies 9 and 10 that are adapted to enmesh with one another in the same plane.

There are material differences observed between Mani and the present claimed 15 invention. First, Mani does not teach a device that removes lice and nits from hair. The sole purpose of the comb device of Mani is to hold the hair for cutting by scissors or a mechanical hair clipper. Mani fails to teach or suggest using first and second blade members having successive uniformly shaped teeth as claimed in Claim 1 (Currently amended). Further, Mani fails to teach or suggest the movement of the first and second 20 blade members “parallel and adjacent to one another with their respective opposed edge portions in offset parallel planes along their respective longitudinal axes” as claimed by Applicants.

The offset feature claimed by Applicants is important to the present invention in that it allows the size of the apertures formed between the teeth to be variable depending on the size of the entrapped hairs. In this manner, this ensures that the entire periphery of the entrapped hairs is scrapped by the edges of the teeth forming the apertures and prevents lice and nits from slipping through the device and avoiding removal, while allowing entrapped hairs to slide freely between the teeth during the combing movement of the blade members along the length of the hair.

Accordingly, the comb guide device of Mani is therefore materially different from the present lice and nit removal device as claimed by Applications. In view of the above remarks, Claims 1 (currently amended) and 15 (currently amended) are patentable over Mani, and in condition for allowance. Claims 2, 5, 9-12, and 14 are patentable for at least for the same reasons as Claim 1 (currently amended), since each ultimately depends from claim 1 (currently amended). Claims 16 and 20 are patentable for at least the same reasons as Claim 15 (currently amended) from which each ultimately depends.

Referring to the Office Action, Claim 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Mani (U.S. 1,853,828) in view of Avella (U.S. 3,603,323). The Office Action states that Mani discloses the features previously discussed, but does not disclose the material of the blade members. Avella teaches the use of plastic for making combs. The Office Action concludes that it would be obvious to one of ordinary skill in the art at the time the invention was made "to make blade members of Mani out

of plastic, as taught by Avella, since plastic is durable and low in cost.” Applicants urge that Claim 13 is patentable for at least the same reasons as Claim 1 (currently amended) from which the former ultimately depend.

5           The rejection is hereby traversed and reconsideration is respectfully requested. Applicants respectfully request reconsideration of the teachings of Mani in view of Avella, which on close review by Applicants clearly does not make obvious Applicants’ invention as claimed. The remarks made in response to the above anticipation rejection are also applicable herein. As discussed above, Mani does not disclose or suggest the  
10   use of first and second blade members having successive uniformly shaped teeth where the first and second blade members are adapted to move “parallel and adjacent to one another with their respective opposed edge portions in offset parallel planes along their respective longitudinal axes” as claimed by Applicants.

15           Avella teaches or suggests a hair treating device for roughing or teasing hair to give it fullness which includes a body having movable inward facing comb members thereon which the comb members are actuated toward one another by cam means operable by the user. The comb members are biased apart from one another to permit release of the hair. However, Avella fails to teach or suggest that the comb members or  
20   the comb teeth are able to selectively move in parallel toward one another as claimed by Applicants. Furthermore, Avella fails to teach or suggest the use of successively uniformly shaped teeth as claimed by Applicants. Applicants’ claimed invention is specifically designed to allow the first and second blade members to come together in a

parallel manner where all the teeth come together at the same time. This feature is not present in Avella.

There is no suggestion or motivation in either reference to provide a device for  
5 removing lice and nits from affected hair and scalp or to modify the references to  
present the device claimed by Applicants. The references, individually or in  
combination, do not teach the limitations of the claimed invention. Moreover, the cited  
references provide different solutions to resolve different problems, and are retrieved  
from non-analogous arts. More specifically, Mani is directed to holding hair for straight  
10 cutting, and Avella is directed to roughing or teasing hair to add fullness.

There is no suggestion or motivation provided that would lead one of ordinary  
skill in the art to combine the cited references. One of ordinary skill in the art, based on  
the cited references, therefore could not arrive at the claimed invention and therefore  
15 the claimed invention is not obvious. Claim 13 is not anticipated or made obvious by  
the teaching of the references individually or in combination. Accordingly, in view of the  
above remarks, claim 13 is patentable over Mani in view of Avella, and thus is in  
condition for allowance.

20 Referring to the Office Action, Claims 3 and 17-19 stand rejected under 35  
U.S.C. 103(a) as being unpatentable over Mani (U.S. 1,853,828) in view of Chiavaras et  
al. (U.S. 5,232,000). According to the Office Action, Mani discloses the features  
previously discussed, but does not disclose that the pivot is located at an intermediate

point on either of the elongate members. Chiavaras et al. teaches the placement of a pivot at an intermediate point on either of the elongate members. The Office Action concludes that it would be obvious to one of ordinary skill in the art at the time the invention was made "to make the invention of Mani with the pivot intermediate the  
5 elongate members, as taught by Chiavaras et al., in order to provide the user with better control of opening and closing the blade members."

The rejection is hereby traversed and reconsideration is respectfully requested. Applicants respectfully request reconsideration of the teachings of Mani in view of  
10 Chiavaras et al., which on close review by Applicants clearly does not make obvious Applicants' invention as claimed. The remarks made in response to the above anticipation rejection are also applicable herein. As discussed above, Mani does not disclose or suggest the use of first and second blade members having successive uniformly shaped teeth where the first and second blade members are adapted to move  
15 "parallel and adjacent to one another with their respective opposed edge portions in offset parallel planes along their respective longitudinal axes" as claimed by Applicants.

Chiavaras et al. teaches or discloses a scissors for cutting hair having first and second beams, each of which has a shearing edge and a handle, and further including  
20 a pivot fulcrum affixing the first and second beams to rotate with respect to one another with the pivot located between the shearing edge and the handle of each beam. Each handle includes a first and second portions with the first portion located nearer to the pivot than the second portion. The second portion includes first and second loops. The

loops are on a different plane from the first portion. However, Chiavaras fail to teach or suggest that the pivot point be placed at a proper location on the device to maintain the offset parallel planes configuration of the first and second blade members and their teeth to one another as claimed by Applicants. This is an important feature to

5 Applicants' claimed invention.

As shown in Figure 3 of Chiavaras et al, the pivot point 23 resides in the same plane as the beams 25 and 29. This causes the shearing edges 26 and 28 to come together at a skewed angle. This is materially different from Applicants' invention as

10 claimed. Chiavaras et al. clearly teaches away from Applicants claimed invention.

There is no suggestion or motivation in either reference to provide a device for removing lice and nits from affected hair and scalp or to modify the references to present the device claimed by Applicants. The references, individually or in

15 combination, do not teach the limitations of the claimed invention. The cited references provide different solutions to resolve different problems, where Mani is directed to holding hair for straight cutting, and Chiavaras et al. is directed to cutting hair. Thus, Chiavaras et al. clearly teaches away from the device disclosed in Mani.

Furthermore, the devices disclosed by the cited references are not mechanically compatible with one another and are designed to operate differently. The combination

20 of the references would result in an inoperable device.



There is no suggestion or motivation provided that would lead one of ordinary skill in the art to combine the cited references. One of ordinary skill in the art, based on the cited references, therefore could not arrive at the claimed invention and therefore the claimed invention is not obvious. Claims 3, 17-19 are not anticipated or made  
5 obvious by the teaching of the references individually or in combination. Accordingly, in view of the above remarks, claims 3, 17-19 are patentable over Mani in view of Chiavaras et al., and thus is in condition for allowance.

Applicants would like to bring to the Examiner's attention that case law clearly  
10 supports the above discussion that the cited references do not make Applicants' invention as claimed obvious especially when the reference fails to teach or even suggest the elements of Applicants' invention as claimed. Also, the case law is clear in guarding against the use of hindsight in reading Applicants' invention into the prior art, which art is clearly not disclosing the Applicants' invention as claimed. Applicants would  
15 like to bring the following case to the Examiner's attention:

The Supreme Court in Calmar, Inc. v. Cook Chemical Co., 383 U.S. 1, 86, in which the Court warns the dangers of "slipping into hindsight", citing the case of Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co., 332 F.2d 406, 141 U.S.P.Q. 549  
20 (6<sup>th</sup> Cir, 1964), where the doctrine is stated:

We come to the patented device which after all is the subject matter of this case. At the outset we take note of two well-established principles. The first is that in considering the

5            questions of obviousness, we must view the prior art from the  
point in time prior to when the patented device was made. Many  
things may seem obvious after they have been made and for this  
reason, courts should guard against slipping into use of hindsight.  
We must be careful to "view the prior art without reading into that  
art the teachings of appellant's invention. Application of Sporck,  
301 F.2d 686, 689 (C.C.P.A.).

10           In view of the foregoing, Applicants submit that the claims as now presented are  
in condition for allowance and early passage to issue is therefore deemed proper and  
respectfully requested. Applicants respectfully request that a timely Notice of Allowance  
be issued in this case.

15           It is believed that no additional fee is due. However, if any additional fee is due,  
it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,



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